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June 14, 2021

Via CM/ECF

Hon. Jeremiah J. McCarthy
United States Magistrate Judge
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Dear Judge McCarthy:

RE: Kistner v. City of Buffalo, et al.
Case No. 18-CV-00402
Our File No.: 4246.23224

Please accept this submission as Plaintiffs' letter brief in accordance with this Court's Text Order, dated June 7, 2021. (*See* Dkt. 102). After a thorough review of Plaintiff's submissions and notes from oral argument regarding the parties' competing summary judgment motions, Plaintiff is confident that all information relevant and material to this Court's consideration of such motions is already before the Court. Therefore, Plaintiff will rest and rely on his written submissions as well as the arguments presented at oral argument.

In addition, Plaintiff confirms that the following claims have been withdrawn and are no longer before the Court:

1. Plaintiff agrees there is no standalone claim for respondeat superior, punitive damages, and attorneys' fees, and that dismissal of those claims is proper. Plaintiff instead relies on his prayer for relief and allegations in the Complaint that support Plaintiff's recovery of punitive damages and attorneys' fees, as well as his recovery against the City of Buffalo under a theory of respondeat superior for his New York State law claims.
2. Plaintiff agrees that, to the extent this Court finds there are more traditional tort theories available to him – *i.e.* false arrest, false imprisonment, and malicious prosecution – dismissal of his intentional infliction of emotional distress claim is proper.
3. To the extent the Court finds that the evidence supports that there are triable issues regarding Plaintiff's *Monell* claim against the City of Buffalo, Plaintiff agrees that his official capacity claims against the individual defendants are duplicative and should be dismissed.
4. Plaintiff withdraw his claim for assault.

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Our office will make ourselves available at the Court's convenience should it require anything further. Thank you for your consideration.

Respectfully submitted,

s/Chad A. Davenport

Chad A. Davenport, Esq.